

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FAFARD REAL ESTATE &
DEVELOPMENT CORP.,

Plaintiff,

vs.

METRO-BOSTON BROADCASTING,
INC.,

Defendant,

CIVIL ACTION NO. 04-11531-RGS

SPECIAL MOTION TO DISMISS

Pursuant to G.L. c. 184 § 15 (c), defendant moves to dismiss this action and moves for an award of its costs and reasonable attorneys fees, which defendant asks be assessed at a separate hearing following the ruling on this motion.


As grounds for this motion, defendant states that this action is frivolous because (1) it is devoid of any reasonable factual support; (2) it is devoid of any arguable basis in law; and (3) the action or claim is subject to dismissal based on valid legal defenses. In particular, plaintiff was not willing or able to close on the purchase of defendant's land because plaintiff had no means of access to the land. Plaintiff so informed defendant before the purchase and sale agreement expired, and made numerous requests for an extension of the closing date to resolve this access issue. Ultimately, the agreement expired without plaintiff giving notice to defendant of any intention to close. Plaintiff's alleged attendance at the registry of deeds, supposedly to close on the purchase, was made without notice to defendant and was a sham as a matter of law. Further, the parties did not have a meeting of the minds on an essential term

of the agreement, specifically the location of the northeastern boundary of the land to be conveyed.

In support of this motion, defendant relies on the accompanying affidavits of Mary Heller Halcomb and Kenneth R. Berman, and on the accompanying memorandum of law.

METRO-BOSTON BROADCASTING, INC.

By its attorneys,



Kenneth R. Berman (BBO 040320)

Nutter McClennen & Fish LLP

World Trade Center West

155 Seaport Boulevard

Boston, Massachusetts 02210

(617) 439-2000

July 15, 2004

Certificate Of Service

I certify that I served this document today on opposing counsel by hand.



Kenneth R. Berman

July 15, 2004